IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH.

CWP No.7689 of 2006
Date of decision: 11.09.2007

Ashok Kumar.

-----Petitioners

Vs.

State of Punjab and others.

-----Respondents

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE AJAI LAMBA

Present: Mr. Amit Dhawan, Advocate
for the petitioners.

Ms. Madhu P. Singh, Advocate
for respondent No.3.

ADARSH KUMAR GOEL, J.

This petition seeks quashing of resolution dated 27.2.2006, Annexure P-6, and for reinstatement of the petitioner.

Case of the petitioner is that he joined service on 1.4.1973 as Sewadar and was, thereafter, promoted as Clerk in the year 1979. One of his kidneys was removed. He remained on leave from 1.5.2005 to 13.5.2005 to attend to his brother, who was seriously ill. A notice was given to him to seek his explanation and on that account, his one annual increment was stopped for one year. He could not attend his office from 2.7.2005 to 3.8.2005, for which, he was asked to give his explanation vide letter dated

3.8.2005, Annexure P-4. The petitioner submitted his resignation on 27.9.2005, on account of stoppage of his increment, even though he had earned leave to his credit. However, after realising that he had committed a mistake in a fit of anger, he gave another application dated 30.9.2005, withdrawing his resignation. In spite of his application for withdrawal, resignation of the petitioner was accepted on 27.2.2006, vide Annexure P-6.

Contention raised on behalf of the petitioner is that since resignation of the petitioner had not become operative and had not been accepted, the same be treated to have been withdrawn. The petitioner had already rendered service of 32 years.

Stand taken on behalf of the respondents is that the petitioner was habitual of remaining absent and, therefore, his resignation was rightly accepted. It has also been submitted that the letter of withdrawal was addressed to the Executive Officer and not to the Municipal Council.

We have considered the rival submissions and perused the record.

We make it clear that we are not concerned with justifiability or otherwise of any action, which may be taken against the petitioner for any misconduct including his alleged absence. We are only concerned with validity of acceptance of the resignation after the petitioner had withdrawn the same. The letter of resignation as well as withdrawal, were addressed to the same authority and the plea that letter of withdrawal was not addressed

to the competent authority, cannot be accepted.

It is well settled that unless the rules otherwise provide, resignation can be effective only on acceptance. Reference may be made to the judgment of the Hon'ble Supreme Court in ***Moti Ram v. Param Dev and another*** AIR 1993 SC 1662, which has been followed in ***Dr. Prabha Atri v. State of U.P. and others*** AIR 2003 SC 534. In the present case, it has not been shown that resignation could be effective without acceptance.

Accordingly, in view of law laid down in ***Moti Ram*** *(supra)* ***Dr. Prabha Atri*** *(supra),* the impugned order cannot be sustained.

Accordingly, this petition is allowed. The impugned resolution, Annexure P-6, is quashed. The petitioner will be entitled to be reinstated. However, in the circumstances of the case, he will not be entitled to backwages. It is also made clear that Municipal Council will be at liberty to take such further proceedings as may be called for in accordance with law.

(Adarsh Kumar Goel)
Judge

September 11, 2007 **(Ajai Lamba)**
ashwani **Judge**